

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| IN RE:<br><br>DEREGULATION OF LOCAL EXCHANGE<br>SERVICES IN COMPETITIVE MARKETS | DOCKET NO. INU-04-1 |
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**ORDER ACCEPTING AMENDED POST-HEARING BRIEF AND  
GRANTING MOTIONS TO STRIKE**

(Issued October 15, 2004)

On October 4, 2004, the Iowa Association for Municipal Utilities (IAMU) filed with the Utilities Board (Board) a post-hearing brief in this docket pursuant to the Board's order establishing a briefing schedule issued September 9, 2004. Included in IAMU's brief was the written testimony of Ivan Webber. In support of the inclusion of Mr. Webber's testimony, IAMU states that its purpose is to provide expert testimony for IAMU's position that the contestable market theory proposed by Qwest Corporation (Qwest) fails to account for municipal competition.

On October 5, 2004, IAMU filed a "Motion for Acceptance of an Amended Post-Hearing Brief." In support of its request, IAMU states that a draft version of the brief was inadvertently filed and the amended substitution reflected typographical and grammatical corrections. IAMU states that there were no corrections made to Mr. Webber's testimony.

On October 14, 2004, Qwest filed a motion to strike Mr. Webber's testimony. In support of its request, Qwest states that the inclusion of Mr. Webber's testimony is

not in compliance with the Board's procedural schedule in this docket which provided that the last date for filing statements of position was August 2, 2004, and set a hearing for the purpose of receiving statements and testimony and to allow for cross-examination on August 24, 25, 26, and 30, 2004. Qwest also states that IAMU did not offer an explanation as to why Mr. Webber's testimony was not offered before the August 2, 2004, deadline and that its submission at this time effectively denies Qwest an opportunity to cross-examine Mr. Webber with respect to the testimony.

On October 15, 2004, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a similar motion to strike Mr. Webber's testimony. In support of its request, Iowa Telecom states that the testimony cannot be cross-examined at this point in the proceedings and that IAMU did not offer any reason as to why it could not have presented this information at an earlier date.

With respect to IAMU's request for acceptance of its amended post-hearing brief, the Board finds that there are no substantial changes to IAMU's original submission. Therefore, the Board will accept IAMU's amended and substituted post-hearing brief.

With respect to the motions to strike, the Board notes that Mr. Webber's testimony does not appear to address specific legal issues being considered by the Board in this docket. Rather, Mr. Webber's testimony focuses on factual information regarding the procedures and requirements for creation of a municipal utility. Neither Qwest nor Iowa Telecom offers any objection to the substance of Mr. Webber's testimony or indicate that they take issue with it. Nevertheless, the inclusion of Mr.

Webber's testimony at this time during these proceedings, significantly beyond the deadline set for the submission of statements and testimony and after the hearing was completed, would violate the procedural schedule set by the Board. In addition, the participants in this docket would not be afforded an opportunity to cross-examine Mr. Webber. Therefore, and in the absence of any showing of good cause for the late filing, the Board will grant the motions to strike Mr. Webber's testimony.

**IT IS THEREFORE ORDERED:**

1. The "Motion for Acceptance of an Amended Post-Hearing Brief" filed by Iowa Association of Municipal Utilities on October 5, 2004, is granted.
2. The motions to strike filed by Qwest Corporation on October 14, 2004, and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, on October 15, 2004, are granted.

**UTILITIES BOARD**

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 15<sup>th</sup> day of October, 2004.